IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 2ND NOVEMBER 2007 / 11TH KARTHIKA 1929

WP(C).No. 32599 of 2007(E)

PETITIONER:

K.R.USHASREE,
PROPRIETRESS, M/S. SAI EXPORT ENTERPRISES,
NO.21, PRASANTHI NAGAR, MANGAD P.O., KOLLAM.

BY ADV. SRI.ANIL NARAYANAN
SMT.A.K.PREETHA

RESPONDENT:

ASST. P.F.COMMISSIONER,
SUB REGIONAL OFFICE, MANNANIYA BUILDING,
CHINNAKKADA, KOLLAM-1.

BY SMT. T.N. GIRIJA - SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 02/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S. SIRI JAGAN, J.

W.P.(C)No. 32599 OF 2007

Dated this the 2nd day of November, 2007

JUDGMENT

By Ext.P4 order, the petitioner was assessed to contributions under the Employees Provident Fund and Miscellaneous Provisions Act. The petitioner submits that Ext.P4 order was served on the petitioner on 26.10.2007, although the order is dated 5.10.2007. On 31.10.2007 the petitioner filed Ext.P8 application for review under Section 7B of the Act. However, on 23.10.2007 itself the respondents issued Ext.P7 order under Section 8F of the Act initiating coercive proceedings for recovery of the amount assessed as per Ext.P4. The petitioner's contention is that this is arbitrary. The statute confers a right on the petitioner either to file an application under Section 7B or an appeal before the Provident Fund Appellate Tribunal for which specific periods of limitation are also prescribed. The petitioner has, in fact within the time prescribed, filed Ext.P8 application under Section 7B. That being so, the initiation of proceedings under Section 8F simultaneously

with the service of Ext.P4 order cannot be justified is the contention raised.

2. The petitioner has got another contention that since the petitioner is disputing the entitlement of 29 employees to be enrolled as members of the Fund, that question has to be decided only under paragraph 26B of the Employees Provident Fund Scheme which jurisdiction rests with the Regional Provident Fund Commissioner and not the respondent.

3. I have heard the learned standing counsel appearing for the Provident Fund Organisation also. I am of opinion that when the statute prescribes remedies by way of review as well as appeal, it was not proper on the part of the respondent in initiating proceedings under Section 8F simultaneously on the date when the assessment order was served on the petitioner. Therefore I dispose of this writ petition with the following directions.

The respondent shall consider Ext.P8 application filed by the petitioner under Section 7B of the Act as expeditiously as possible. While considering the same, the respondents shall specifically consider the contention of the petitioner that since this matter involves consideration under paragraph 28B of the

Scheme, the matter has to be considered by the Regional Provident Fund Commissioner only. If the said contention is correct, then the respondents shall refer the matter to the Regional Provident Fund Commissioner for adjudication on that question. Till Ext.P8 is finally disposed of, all proceedings pursuant to Ext.P7 order under Section 8F of the Act shall stand recalled.

S. SIRI JAGAN, JUDGE

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